

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BLUEFIELD DIVISION**

1 STARR DALTON,

Petitioner,

v.

CIVIL ACTION NO. 1:09-cv-01056

GOVERNOR JOE MANCHIN, and,  
JIM RUBENSTEIN,

Respondents.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Petitioner's September 29, 2009 *Special Petition for Writ of Habeas Corpus Ad Subjiciendum* § 2254 [Docket 1] and the Petitioner's December 11, 2009 *Amended Special Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254* [Docket 10] .

By Order [Docket 18] of May 4, 2010, this action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On May 13, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* [Docket 19] wherein it is recommended that this Court dismiss both the Petitioner's *Petition* [Docket 1] and *Amended Petition* [Docket 10]. Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*.


The Court, therefore, **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **FINDS** that the Petitioner's instant § 2254 petition, and all its accompanying documentation, constitutes an

unauthorized second or successive § 2254 petition which must be dismissed pursuant to 28 U.S.C. § 2244(b). Accordingly, the Court **ORDERS** that both the Petitioner's *Special Petition for Writ of Habeas Corpus Ad Subjiciendum* § 2254 [Docket 1] and *Amended Special Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254* [Docket 10] be **DISMISSED**.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: June 2, 2010

  
IRENE C. BERGER, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA